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NANCY HUTCHINS

BRANCH COUNTY REGISTER OF DEEDS

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DECLARATION OF RESTRICTIVE COVENANT

This transfer is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively.

Former Bronson Reel Facility, 505 North Douglas Street, Bronson, Michigan, designated as Operable Unit 1 of the North Bronson Former Facilities Sites, also known as the North Bronson Industrial Subareas, Branch County, Michigan
MDEQ Site ID No. 12000018
U.S. EPA Site No. MIN000508192

This Declaration of Restrictive Covenant and Grant of Environmental Protection Easement ("Restrictive Covenant") is made on September 4, 2014 by **Bronson Specialties, Inc. (BSI)**, the Grantor, whose address is 3850 Hamlin Road, Auburn Hills, MI 48326 for the benefit of the Grantee, the Michigan Department of Environmental Quality ("MDEQ"), whose address is 525 West Allegan Street, Lansing, Michigan 48933.

RECITALS

- i. The Grantor is the title holder of the real property located at 505 North Douglas Street, Bronson, Branch County, Michigan and legally described in Exhibit 1 attached hereto ("Property"). The Property is associated with the North Bronson Former Facilities Sites ("NBFF") and is considered to be Operable Unit 1 ("OU1") of that site. The Tax ID number of the Property is 200-002-000-244-00.
- ii. The United States Environmental Protection Agency ("U.S. EPA") has selected a remedial action for the Property as embodied in the Record of Decision dated September 2006 ("ROD"). The remedial action is being implemented to address environmental conditions described in the ROD. The MDEQ has indicated its support for the remedial action set forth in the ROD, pursuant to Part 201 (as defined below), as set forth on page v of the ROD.
- iii. The remedial action selected in the ROD requires the recording of this Restrictive Covenant with the Branch County Register of Deeds to: (1) restrict unacceptable potential exposures to hazardous substances in drinking water by prohibiting the withdrawal and use of groundwater and prohibiting the installation of water wells on the Property until such time as the groundwater meets federal and state drinking water standards, except as provided herein, which limitations mirror the requirements of the proposed groundwater ordinance to be enacted by the City of Bronson, Michigan restricting use of groundwater in the 220-acre "Restricted

Zone" of the North Bronson Industrial Area Superfund Site (which includes the Property), (2) prevent potential unacceptable exposure to currently unknown concentrations, if any, of hazardous substances that may be present in soil beneath the building foundations on the Property by requiring the investigation of soil under the slab and foundations by one or more of the Potentially Responsible Parties ("PRP(s)") with respect to the NBFF OU1, if such slab and foundations are ever removed and the soil is exposed, and (3) require remediation should unacceptable levels of contamination be found in soil that is exposed as a result of the removal of the building foundations. The investigation would be conducted by PRP(s) and coordinated through U.S. EPA and MDEQ as referenced in subparagraph (2), **Restrictions on Activity**. If unsaturated soils exceed applicable Part 201 criteria, PRPs would be required to excavate or contain soil to restrict exposure to hazardous substances in excess of such criteria.

iv. The purpose of this Restrictive Covenant and Easement is to create restrictions that run with the land and in the Grantor's real property rights; to protect the public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the Property; and to grant access to the Grantee, U.S. EPA as a Third Party Beneficiary, other parties as provided in this Restrictive Covenant and the accompanying Access Agreement Terms (as applicable), and the agencies' or parties' representatives to monitor and conduct Response Activities.

v. Metals and total petroleum hydrocarbons have been released at the Property but the majority of the soils affected by these materials were excavated in 1989. In addition, trichloroethene and its breakdown products are found in groundwater beneath the Property, but these chemicals are believed to originate from upgradient sources. The Property is a facility as that term is defined in Section 101(9) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"); and Section 20101(1)(r) of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 *et seq.* ("NREPA").

vi. At the time of recording this Restrictive Covenant and Easement, the following is known about the Property's environmental conditions:

1. Volatile Organic Compounds (VOCs)

Groundwater samples collected in 2003 and 2004 indicated that trichloroethene and its breakdown products (cis-1,2-dichloroethene and vinyl chloride), were present in groundwater beneath the Property at concentrations that exceed drinking water criteria. These groundwater contaminants are believed to originate from upgradient sources located east of the Property and are the basis for the water well restriction in this Restrictive Covenant. 1,1,1-trichloroethane, its breakdown products, and other VOCs, all at low concentrations, were also present in groundwater beneath the Property, but at concentrations that do not exceed federal and state drinking water criteria.

2. Metals

All accessible soils within the fenced western yard area were excavated and removed in 1989. Certain metals were detected above measured background concentrations in some soil samples taken in the remaining narrow strips of soil next to the fence and building, but all metal concentrations were below Michigan Generic Screening Levels for residential property use. Samples collected in 2003 and 2004 indicate that concentrations of metals in shallow groundwater beneath and downgradient of the

Property are below federal maximum contaminant levels ("MCLs") allowed for drinking water.

3. Total Petroleum Hydrocarbons (TPH)

In sampling conducted in 2003, petroleum hydrocarbons were present as a thin layer of light non-aqueous phase liquid ("LNAPL") at MW2 and were also present in soils around the perimeter of the oil-water separator excavation and in shallow groundwater beneath the yard area. Because the potential sources of these hydrocarbons have been removed (underground storage tank, oil-water separator, and site soils), it is expected that total petroleum hydrocarbon ("TPH") concentrations will decline over time as a result of natural attenuation. There are no MCLs established for TPH; surrogate compounds such as benzene, toluene, ethylbenzene and xylenes were below applicable soil screening levels and these compounds were not detected in groundwater at concentrations above laboratory reporting limits or drinking water criteria.

Although the Property was found not to be a current source of impact to groundwater in 2003, the U.S. EPA and the MDEQ have determined that area-wide groundwater conditions present a threat to human health through ingestion of groundwater; and that the land use and resource use restrictions set forth below are required to prevent unacceptable exposures.

vii. The restrictions contained in this Restrictive Covenant and Easement are based upon information available to the U.S. EPA and the MDEQ at the time the ROD was issued. Failure of the remedy selected in the ROD to achieve and maintain the criteria, exposure controls, and requirements specified in the ROD; future changes in the environmental condition of the Property or changes in the applicable cleanup standards set forth in the remedial action and selected in the ROD; the discovery of environmental conditions at the Property that were not accounted for in the ROD, regardless of the date of the release of hazardous substances contributing to those environmental conditions; or the use of the Property in a manner inconsistent with the restrictions described herein, may result in this Restrictive Covenant and Easement not being protective of public health, safety, and welfare, and the environment. Information pertaining to the environmental conditions at the Property and Response Activities undertaken at the Site is on file with the U.S. EPA and the MDEQ, Remediation and Redevelopment Division, and at the Site repository at the Bronson Public Library.

viii. The MDEQ recommends that prospective purchasers or users of the Property undertake appropriate due diligence prior to acquiring or using this Property, and undertake appropriate actions to comply with the applicable requirements of Section 20107a of the NREPA.

SUMMARY OF RESPONSE ACTIVITIES

A risk assessment was finalized in 2006 based on the results of a remedial investigation conducted on the Property. This assessment concluded that the concentrations of hazardous substances in soil at the Property do not pose an unacceptable risk to the environment or human health, and that no remedial measures beyond this Restrictive Covenant are required to address the soil at the Property. The concentrations of residual constituents in soils and groundwater are all below Michigan Generic Residential Screening Criteria for the following pathways: contact with soil and groundwater, volatilization to indoor air from soil and groundwater, and inhalation of soil particulates. Exposure via the drinking water pathway is restricted by this Restrictive Covenant.

A feasibility study concluded that a no-action remedy is appropriate for the Property, but recommended placement of this Restrictive Covenant to prohibit use of groundwater and require characterization of the soils beneath the main building if the slab is removed. The ROD requires this Restrictive Covenant to 1) ensure that the soils beneath the building foundations are characterized by potentially responsible party(s) (PRP(s)) if the slabs are removed, 2) require remediation (to be performed by the PRPs) should unacceptable levels of contamination be found in soil that is exposed as a result of the removal of the building foundations in accordance with the ROD, and 3) prohibit the use of groundwater from beneath the Property and prohibit the installation of water wells on the Property, except as provided herein, until the groundwater meets federal and state drinking water standards.

DEFINITIONS

"Grantee" shall mean the MDEQ, its successor entities, those persons or entities acting on its behalf and any other person or entity requested by MDEQ or U.S. EPA to conduct agency approved response activities in furtherance of the remedy selected in the ROD;

"Grantor" shall mean the title holder of the Property at the time this Restrictive Covenant and Easement is executed or, following conveyance to a new title holder, any future title holder of the Property or some relevant sub-portion of the Property;

"MDEQ" shall mean the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf;

"NREPA" shall mean the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*;

"Part 201" shall mean Part 201, Environmental Remediation, of the NREPA, MCL 324.20101 *et seq.*;

"Property" shall mean the Former Bronson Reel Facility, which is Operable Unit 1 of the North Bronson Former Facilities Sites, also known as the North Bronson Industrial Subareas. The legal description of the Property is set forth in Exhibit 1;

"Response Activities" shall mean, consistent with Section 101(25) of CERCLA, 42 U.S.C. Section 9601(25), such actions as have been or may be necessary to conduct any removal, remedy or remedial action, as those terms are defined in Sections 101(23) and 101(24) of CERCLA, 42 U.S.C. Sections 9601(23) and 9601(24), on the Property and/or at the Site, including enforcement activities related thereto;

"Site" shall mean Operable Unit 1 of the North Bronson Former Facilities Sites, also known as the North Bronson Industrial Subareas, MDEQ Site ID No. 12000018;

"U.S. EPA" shall mean the United States Environmental Protection Agency, its successor entities and those persons or entities acting on its behalf; and

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 201; or the Part 201 Administrative Rules, 2002 Michigan Register 24, effective December 21, 2002, as amended ("Part 201 Rules"), shall have the same meaning in this

document as in Parts 3 and 201 of the NREPA and the Part 201 Rules, as of the date of execution of this Restrictive Covenant and Easement.

NOW THEREFORE,

For valuable consideration of less than \$100.00, the receipt of which is hereby acknowledged, the Grantor, on behalf of itself, its successors and assigns, hereby covenants and declares that the Property shall be subject to the restrictions set forth below, for the benefit of the Grantee, and grants and conveys to the Grantee, and its assigns and representatives, the perpetual right to enforce said restrictions. The Grantor further, on behalf of itself, its successors and assigns does grant and convey to the Grantee and its representatives an environmental protection easement of the nature, character, and purposes set forth below with respect to the Property, and the right to enforce said easement.

1. **Restrictions on Land Use:** The Grantor shall prohibit all residential uses of the Property. Permissible and impermissible uses compatible with nonresidential uses are generally described in Exhibit 3 (Allowable Uses).
2. **Restrictions on Activity:** The Grantor shall prohibit the following:
 - (a) activities on the Property that cause existing contamination to migrate beyond the boundaries of the Property, increase the cost of Response Activities, or otherwise exacerbate the existing contamination located on the Property. The term "exacerbation" is more specifically defined in Section 20101(1)(q) of the NREPA, MCL 324.20101(1)(q).
 - (b) use of the Property in a manner that may interfere with Response Activities at the Property, including interim response, remedial action, operation, maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the remedial action.
 - (c) any activity that disturbs the building foundations unless such activity is conducted in association with appropriate soil characterization and in compliance with applicable state and federal environmental, health, and safety laws and regulations including, but not necessarily limited to, the use of appropriate personal protective equipment.
 - (d) any excavation or other intrusive activity that results in exposure of soils below the slab or foundations of the buildings on the Property (as surveyed in Exhibit 2), unless such soils are investigated and, if necessary, remediated under the process described in the ROD. Under the ROD, such investigation and remediation would be conducted by PRP(s) and coordinated through the Agencies. This Restrictive Covenant does not address, and is not intended to govern or affect, the assignment of liability or responsibility for the investigation and, if necessary, remediation as described in the ROD of soils beneath the main building slab or foundation.
 - (e) any construction and/or operation of wells or other devices on the Property to extract groundwater for consumption, irrigation, or any other use, except for wells and devices that are part of a U.S. EPA-approved or MDEQ-approved response activity, or installed by the owner or a third party in furtherance of

an investigation of the environmental condition of the Property for purposes of a prospective purchase, lease, financing, or other transaction. Use and/or extraction of groundwater is further prohibited because of the potential that groundwater extraction at the Property could alter the flow or configuration of the area-wide groundwater plume and otherwise interfere with response activities. Short-term dewatering for construction purposes is permitted with prior notification to the U.S. EPA and the MDEQ, provided the dewatering, including proper management and disposal of the groundwater, is conducted in accordance with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, unacceptable exposure to hazardous substances, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations including, but not limited to, Part 201 of the NREPA.

3. **Management of Contaminated Soil, Media, and Debris:** In the event of any removal, destruction, or disturbance of concrete slabs or foundations of the buildings on the Property, as dictated by the results of sampling required under Paragraph 2(d), the party conducting the removal, destruction, or disturbance shall manage all soils, media and/or debris located on the Property in accordance with the applicable requirements of Section 20120c of Part 201, MCL 324.20120c; Part 111, Hazardous Waste Management, of NREPA, MCL 324.11101 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws and regulations.

4. **Access:** The Grantor grants to the Grantee and its representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the ROD and with this Restrictive Covenant and Easement, including the right to take samples, inspect the operation of the Response Activities, and, inspect any records relating thereto; and to perform any actions necessary to maintain compliance with Part 201 and the ROD.

Nothing in this Restrictive Covenant and Easement shall limit or otherwise affect the Grantee's right of entry and access, or authorities to take Response Activities as defined in this Restrictive Covenant and Easement, as well as in NREPA, and any successor statutory provisions, or other state or federal law.

The Grantor grants to the U.S. EPA, its representatives, and any person or entity requested by the Grantee or the U.S. EPA (the "Agency" or "Agencies") to conduct Agency-approved response activities in furtherance of the Remedial Action selected in the ROD, and such parties' respective representatives and assignees, access to the Property for the purpose of implementing, performing, constructing and monitoring the Remedial Action, including the right to take samples, inspect the operation of the Remedial Action, and to perform any actions necessary to maintain compliance with the Remedial Action; provided, however, that the foregoing grant of access to any party other than the Agencies, and such Agencies' representatives and assignees, shall be subject to and contingent upon the execution of a separate written access agreement between such party and the Grantor, which agreement shall include the provisions set forth in Exhibit 4. Subject to the foregoing, the access granted shall be non-terminable and shall remain in full force and effect so long as any obligation or liability of any one or more PRPs continues under or in respect of the ROD or the Response Activities.

5. **Term:** This Restrictive Covenant and Easement shall run with the land and shall be binding on the Grantor, including persons as set forth in Paragraph 12(e), Successors.

6. **Third Party Beneficiary:** The Grantor, on behalf of itself and its successors, transferees, and assigns, hereby agrees that the United States, acting by and through the U.S. EPA, its successors and assigns, shall be a third party beneficiary ("Third Party Beneficiary") of all the benefits and rights set out in the restrictions, covenants, easements, exceptions, notifications, conditions, and agreements herein, and that the Third Party Beneficiary shall have the right to enforce the restrictions described herein as if it was a party hereto. No other rights in third parties are intended by this Restrictive Covenant and Easement, and no other person or entity shall have any rights or authorities hereunder to enforce these restrictions, terms, conditions, or obligations beyond the Grantor, the MDEQ, their successors, assigns, and the Third Party Beneficiary.

7. **Enforcement:** The State of Michigan, through the MDEQ; and the United States of America, through the U.S. EPA as a Third Party Beneficiary, may enforce the restrictions and grant of easement set forth in this Restrictive Covenant and Easement by legal action in a court of competent jurisdiction.

8. **U.S. EPA Entry, Access, and Response Authority:** Nothing in this Restrictive Covenant and Easement shall limit or otherwise affect the U.S. EPA's right of entry and access, or authority to undertake Response Activities as defined in this Restrictive Covenant and Easement, as well as in CERCLA, the National Contingency Plan, 40 Code of Federal Regulations Part 300 ("NCP"), and any successor statutory provisions, or other state or federal law. The Grantor consents to officers, employees, contractors, and authorized representatives of the U.S. EPA entering and having continued access to this Property for the purposes described in Paragraph 4, above.

9. **Modification/Release/Rescission:** The Grantor may request in writing to the U.S. EPA and the MDEQ, at the addresses provided in Paragraph 11, below, modifications to, or release or rescission of, this Restrictive Covenant and Easement. This Restrictive Covenant and Easement may be modified, released, or rescinded only with the written approval of the U.S. EPA and the MDEQ. Any approved modification to, or release or rescission of, this Restrictive Covenant and Easement shall be filed with the appropriate county Register of Deeds by the Grantor and a certified copy shall be returned to the MDEQ and the U.S. EPA at the addresses provided in Paragraph 11, below.

10. **Transfer of Interest:** The Grantor shall provide notice at the addresses provided in this document to the MDEQ and to the U.S. EPA of the Grantor's intent to transfer any interest in the Property, or any portion thereof, at least fourteen (14) business days prior to consummating the conveyance. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Grantor without adequate and complete provision for compliance with the terms and conditions of this Restrictive Covenant and Easement and the applicable provisions of Section 20116 of the NREPA. The Grantor shall include in any instrument conveying any interest in any portion of the Property, including, but not limited to, deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF RESTRICTIVE COVENANT AND ENVIRONMENTAL PROTECTION EASEMENT, DATED [month, day, year], AND RECORDED WITH THE [name of county where Property is located] COUNTY REGISTER OF DEEDS, LIBER _____, PAGE _____.

11. **Notices:** Any notice, demand, request, consent, approval, or communication that is required to be made or obtained under this Restrictive Covenant and Easement shall be made in writing; include a statement that the notice is being made pursuant to the requirements of this Restrictive Covenant and Easement; include the MDEQ Site ID number and reference number; and shall be served either personally, or sent via first class mail, postage prepaid, as follows:

For the U.S. EPA:

Director
Superfund Division (SR-6J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

with a copy to:

Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

For the MDEQ:

Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926

12. **Miscellaneous:**

(a) **Controlling Law.** The interpretation and performance of this Restrictive Covenant and Easement shall be governed by the laws of the United States as to the obligations referred to in the ROD and as to the meaning of terms used in CERCLA, the NCP and other federal laws and regulations, and by the laws and regulations of the State of Michigan for all other purposes hereunder (without reference to choice of laws and principles thereof). The right to enforce the conditions and restrictions in this Restrictive Covenant are in addition to other rights and remedies that may be available, including, but not limited to, administrative and judicial remedies under CERCLA or Part 201 of the NREPA.

(b) **Construction.** Any general rule of construction to the contrary notwithstanding, this Restrictive Covenant and Easement shall be liberally construed to achieve the purpose of this Restrictive Covenant and Easement and the policy and purpose of CERCLA and the land use restrictions and prospective use limitations required by Part 201. If any provision of this Restrictive Covenant and Easement is found to be ambiguous, an interpretation consistent with the purpose of this Restrictive Covenant and Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If any provision of this Restrictive Covenant and Easement is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the

validity of any other provision hereof, and all other provisions shall continue unimpaired and in full force and effect.

(d) **Entire Agreement.** This Restrictive Covenant and Easement and its attachments and appendices supersede all prior discussions, negotiations, understandings, or agreements between the undersigned relating to the matters addressed herein, all of which are merged herein.

(e) **Successors.** The covenants, terms, conditions, and restrictions of this Restrictive Covenant and Easement shall be binding upon; and inure to the benefit of, the Grantor and Grantee and their agents, successors, lessees, and assigns and any subsequent title holders, occupants or other persons acquiring an interest in the Property or a relevant portion of the Property, and their respective agents, successors and assigns. "The rights, but not the obligations or authorities, of the U.S. EPA are freely assignable to any public entity, subject to the notice to the Grantor, its successors and assigns, as their interests appear in the public title records kept and maintained by the Branch County Register of Deeds."

13. **Exhibits:** The following exhibits are incorporated into this Restrictive Covenant and Easement:

Exhibit 1 – Legal Description of the Property

Exhibit 2 – Survey of the Property

Exhibit 3-Allowable Uses

Exhibit 4 – Access Agreement Terms

14. **Authority to Execute Restrictive Covenant and Easement:** The undersigned person executing this Restrictive Covenant and Easement represents and certifies that he or she is duly authorized and has been empowered to execute this Restrictive Covenant and Easement.

IN WITNESS WHEREOF, Bronson Specialties, Inc., the Grantor, has caused this Restrictive Covenant and Easement to be executed on this 4th day of September, 2014.

John J. Gasparovic
Signature

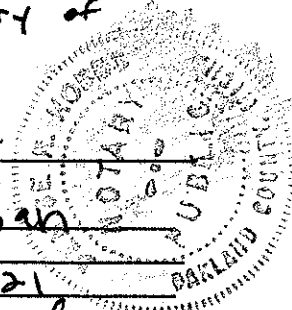
John J. Gasparovic
Printed Name

Vice President and Secretary
Title

STATE OF Michigan)
COUNTY OF Oakland) ss

Acknowledged before me in Oakland County, Michigan, on September 4, 2014 by
John J. Gasparovic, as Vice President and Secretary of
Bronson Specialties, Inc.

Denise R. Hobbs
Denise R. Hobbs
Notary Public, State of Michigan
County of Oakland
My commission expires: 2/12/21
Acting in the County of Oakland



Drafted by and return to:

Scott D. Hubbard
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, MI 49503

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY

Land in the City of Bronson, Branch County, Michigan.

All of Block Number 1 of the Bronson Development Association Subdivision of a part of the S. C. Rose Addition to the Village, now City, of Bronson, Branch County, Michigan, according to the recorded plat thereof, said plat being recorded in Liber 2 of Plats on Page 53, Branch County Register's Office. ALSO commencing at the southwest corner of said Block 1 of the Bronson Development Association Subdivision, running thence Northeasterly along the South line of said Block Number 1 to the Southeast corner thereof, thence South to the Northeast corner of Lot Number 6 of Block Number 2 of said Bronson Development Association Subdivision, thence West on the North line of said Lot Number 6 and a line in continuation thereof to the Northwest corner of said Block Number 2, thence North to the place of beginning. ALSO the North 16-1/2 feet of Railroad Street between Ruggles and Douglas Street in said City as Railroad Street was re-located, being the North 16 1/2 feet of the South 66 feet of Lot 1, and the North 16-1/2 feet of Lot 6 of Block Number 2 of said Bronson Development Association Subdivision.

Tax ID No. 200-002-000-244-00


Excel Engineering, Inc.
 Mechanical • Electrical • Supervisors
 1525 Oak Ridge, E.W. Grand Rapids, MI 49508
 Tel. (616) 333-1771
 Fax (616) 333-1771
 www.excelengr.com

EXHIBIT 3

DESCRIPTION OF ALLOWABLE USES

Nonresidential Land Use: This land use is characterized by any use which is not residential in nature and is primarily characterized by industrial and commercial uses. Industrial uses typically involve manufacturing operations engaged in processing and manufacturing of materials or products. Other examples of industrial uses are utility companies, industrial research and development, and petroleum bulk storage. Commercial uses include any business or income-producing use such as commercial warehouses, lumber yards, retail gas stations, auto dealerships and service stations, as well as office buildings, banks, and medical/dental offices (not including hospitals). Commercial uses also include retail businesses whose principal activity is the sale of food or merchandise within an enclosed building and personal service establishments which perform services indoors such as health clubs, barber/beauty salons, photographic studios, etc.

Any residential use is specifically prohibited from the nonresidential land use category. This would include the primary use of the property for human habitation and includes structures such as single family dwellings, multiple family structures, mobile homes, condominiums, and apartment buildings. Residential use is also characterized by any use which is intended to house, educate, or provide care for children, the elderly, the infirm, or other sensitive populations, and therefore could include day care centers, educational facilities, hospitals, elder care facilities, and nursing homes. The use of any accessory building or portion of an existing building as a dwelling unit permitted for a proprietor or storekeeper and their families, located in the same building as their place of occupation, or for a watchman or caretaker is also prohibited. Any authority that allows for residential use of the Property as a legal non-conforming use is also restricted per the prohibitions contained in this restrictive covenant.

EXHIBIT 4

ACCESS AGREEMENT TERMS

Any written access agreement executed for the purposes stated in Paragraph 4 of the accompanying Declaration shall include the following provisions, in addition to such other consistent provisions as the parties may agree to accept:

1. Exercise of this right of access shall be subject to five business days' advance written notice to [Owner]. A party exercising this right of access shall not interfere with the [Owner]'s business activities on the Property, including without limitation any efforts by [Owner] to market or transfer the Property. Any damage or disturbance of the Property or any building, structure, or improvement located on the Property arising out of the acts or omissions of or on behalf of [NAME] in exercising this right of access shall be promptly repaired or rectified by [NAME], at its expense, to a condition at least as good as existed prior to such acts or omissions. Without limiting the generality of the foregoing, [NAME] shall be responsible to [Owner] for the proper and lawful conduct of all activities carried out on the Property by or on behalf of [NAME] pursuant to access under this Agreement, including responsibility for the proper collection, manifesting, transportation, treatment, storage, and/or disposal of any waste materials generated on or from the Property as a result of such activities. [Owner] shall have the right, at its expense, to have one more of its employees, contractors, consultants, or representatives present to observe any activities on the Property conducted pursuant to this grant of access. [Owner] shall also be entitled, at its option and expense, to split any sample of any environmental medium collected on the Property pursuant to this grant of access.

2. Indemnity. [NAME] shall defend, indemnify, and hold harmless [Owner] and its shareholders, officers, directors, employees, agents, and representatives from and against all claims, liabilities, suits, causes of action, obligations, inquiries, fines, penalties, damages, losses, or costs of any nature, including without limitation reasonable attorney and environmental consulting fees (collectively, "Claims"), incurred by or asserted against [Owner] and arising out of or pertaining in any way to the activities of [NAME] or its employees, officers, directors, agents, representatives, contractors or consultants on or in connection with the Property in total or partial reliance upon the access provided under this Agreement. The indemnity rights addressed in this paragraph extend only to Claims resulting from activities undertaken pursuant to the granting of access and do not extend to Claims, responsibility or liability with respect to response costs, natural resource damages or similar costs or damages for which any person may be liable under any environmental law.

3. Insurance. So long as this Agreement remains in effect, [NAME] shall maintain, and shall require any contractor, subcontractor, or engineering or environmental consultant rendering services in connection with the subject matter of this Agreement to maintain, at its expense, the following insurance in the amounts stated:

- | | | |
|----|-------------------------------|--|
| a. | worker's compensation: | statutory |
| b. | commercial general liability: | \$1,000,000 per occurrence
\$2,000,000 annual aggregate |
| c. | automotive liability: | \$1,000,000 per occurrence |

In addition, so long as this Agreement remains in effect, any engineering or environmental consultant engaged by [NAME] to render services in connection with the subject matter of this Agreement shall maintain professional liability insurance in the amount of \$1,000,000 per claim and \$2,000,000 annual aggregate. Each policy of insurance required under this Paragraph shall name [Owner] as an additional insured party. [NAME] shall furnish to [Owner], and shall require any contractor, subcontractor, or engineering or environmental consultant rendering services in connection with the subject matter of this Agreement to furnish to [Owner], certificates of insurance showing the types and amounts of coverage stated in this Paragraph.